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Security Council Committee established pursuant to resolution 1267 (1999)

Note verbale dated 9 July 2003 from the Permanent Mission of Spain to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Spain to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999), and, in continuation of its note verbale dated 15 April 2003, has the honour to submit the final section (arms embargo and assistance) of its updated report, which was omitted in error (see annex).

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Annex to the note verbale dated 9 July 2003 from the Permanent Mission of Spain to the United Nations addressed to the Chairman of the Committee

Report in fulfilment of United Nations Security Council resolution 1455 (2003)

V. Arms embargo

20. What measures, if any, do you now have in place to prevent the acquisition of conventional arms and weapons of mass destruction (WMD) by Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them? What kind of export control do you have in place to prevent the above targets from obtaining the items and technology necessary for weapons development and production?

The regulations currently applied by Spain are particularly strict where export controls on defence and dual-use materials are concerned. In addition to its domestic legislation, in deciding whether to authorize or refuse exports of defence and dual-use materials Spain also applies the Code of Conduct for Arms Exports, adopted by the Council of the European Union in June 1998, as well as arms embargoes decided by a common position or joint action adopted by the Council or a decision of the Organization for Security and Cooperation in Europe (OSCE) or an arms embargo imposed by a binding resolution of the Security Council of the United Nations. All of the foregoing introduce much stricter criteria.

The acquisition or transfer of weapons of mass destruction is an activity that is in any event prohibited in Spain. However, the Royal Decree of 27 March 1998 approving the regulations on external trade in defence and dual-use materials subjects to controls erga omnes transfers of "conventional weapons" and the chemical and biological agents adapted for use in war and their vectors (missiles) (there are no lists of prohibited destinations).

For dual-use products and technologies Council Regulation (EC) No. 1334/2000 is applied, together with the above-mentioned Royal Decree which implements it, also erga omnes. The Council Regulation establishes a catch-all clause relating to activities aimed at weapons of mass destruction or final destinations for military uses in countries subject to embargo by the United Nations, the European Union or OSCE. Licence applications are assessed on a case-by-case basis, and declarations or certificates of final destination are needed for each transfer.

Export control functions are carried out by the Ministry of the Economy, through the State Secretariat for Economic Affairs and the Interministerial Board for the Regulation of External Trade in Defence and Dual-Use Materials (JIMDDU). JIMDDU is chaired by the State Secretariat for Economic Affairs and Tourism and its members include representatives of the Ministries of Defence, Science and Technology, Treasury, Interior and Foreign Affairs and the National Intelligence Centre.

From 1999 to 2002 JIMDDU refused 57 export licences for chemical substances and equipment manufactured in Spain (most of it towards countries in

the Middle East and North Africa): in eight cases because there was a risk of diversion to produce chemical weapons, and in the 48 remaining cases out of fear that they would also be used to manufacture biological weapons.

Concerning export controls on conventional weapons, during the same period of time JIMDDU, applying the European Union's Code of Conduct, refused 35 export licences to countries in Central America and South America, based on risk of diversion, regional instability, dubious recipients and the domestic situation of the country of destination, despite the fact that the countries do not appear on any United Nations embargo list.

The Customs and Excise Department of the State Tax Administration Agency, through its Central Unit for Risk Analysis, takes the necessary measures to prevent the export of products and components that might be used to manufacture weapons of mass destruction. These measures are applied uniformly and consistently by all Spanish customs offices when accepting customs declarations.

These measures include all measures relating to the monitoring of export declarations regarding those products that are subject to the presentation of a licence as a prerequisite for export authorization, in order to verify their suitability and accuracy, without prejudice to the competence of the State Secretary for Economic Affairs and the JIMDDU.

The Central Unit for Risk Analysis also issues instructions for applying all the information received from the European Anti-Fraud Office (OLAF) or from any other member State, through mutual assistance, concerning the matter at hand.

21. What measures, if any, have you adopted to criminalize the violation of the arms embargo directed at Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them?

The Penal Code of Spain (approved by Organic Law 10/1995 and amended by Organic Law 7/2000 of 22 December) defines the offences of terrorism in articles 571 et seq. Article 576, paragraph 1, states, "The performance, requesting or facilitation of any act of collaboration with the activities or purposes of an armed group or terrorist organization or group shall be punishable by imprisonment of five to ten years and a fine." Paragraph 2 states, "'Acts of collaboration' [are] ... in general, any other equivalent form of cooperation, assistance or complicity, economic or otherwise.".

Article 573 states, "The storing of weapons or munitions and the possession or storage of explosive, flammable, incendiary or asphyxiating substances or devices or components thereof, as well as their manufacture, trafficking, transport or supply, in any form, and the mere placement or use of such substances or of other means or contrivances for achieving the same purpose shall be punishable by imprisonment of 6 to 10 years when they are committed by persons acting at the service of or in collaboration with armed groups, organizations, or terrorist groups.".

Article 301 of the Penal Code establishes prison terms of six months to six years and a fine equivalent to three times the value of the property in question to anyone who knowingly acquires, converts or transmits property originating from a serious offence; anyone who hides or conceals its nature, origin, location, destination, movement or the rights over or ownership of the said property. In

addition to these penalties offenders are liable to disqualification from exercising their profession, trade, industry or business from 3 to 10 years if the acts set forth in the preceding articles are carried out by businessmen in the exercise of their profession (art. 303).

Organic Law 12/1995 of 12 December, the Suppression of Smuggling Act, sets forth penalties for falsifying or failing to present customs declarations, as an administrative offence or as smuggling depending on the value of the products intended for export.

22. Please describe how your arms/arms broker licensing system, if any, can prevent Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them from obtaining items under the established arms embargo.

The Organic Law on the safeguarding of public security (L.O. 1/1992 of 23 February) establishes strict guidelines for preventive action and vigilance with respect to the manufacture and repair of weapons, imitations and reproductions thereof and their basic components; explosives, cartridges and pyrotechnic devices; and the circulation, storage and merchandising, acquisition, sale, possession and use of such items.

The following are the steps to be taken to prevent the procurement of weapons:

(a) In order to open for business and operate, all factories, workshops, storage facilities, sales establishments, shooting galleries and related activities are subject to requirements relating to registration or classification, licensing, reporting, inspection, oversight and control; in addition, the staff responsible for handling weapons must be duly qualified.

(b) Licences or permits for the possession and use of firearms are mandatory and are issued subject to certain restrictions, especially in the case of weapons of personal defence, for which licences or permits are issued only when strictly necessary.

(c) Certain especially dangerous weapons, munitions and explosives are prohibited, as is their storage.

(d) The manufacture, marketing or distribution of weapons and explosives are subject to special licensing regulations under the laws governing foreign investments in Spain, and in any event, are under the oversight of the Ministries of Defence and of the Interior.

Spanish legislation on weapons and explosives is also contained in Royal Decree 230/1998 of 16 February, approving the Explosives Regulations, and in Royal Decree 137/1993 of 29 January approving the Weapons Regulations.

Royal Decree 137/1993 concerning weapons control and inspection grants broad competence to the Ministry of the Interior as the body responsible for guaranteeing public security; its competence in the area of weapons are governed by Organic Law 1/1992 on the safeguarding of public security. The Civil Guard Department carries out all functions deriving from the weapons legislation in force, especially the manufacture, repair, circulation, storage, trade, acquisition, sale, deposit, possession and use of weapons. The Police Department, for its part, has competence in the area of possession and use of weapons.

To conduct weapons controls, the Civil Guard may inspect, as many times as it deems necessary and without prior notice, factories, workshops, weapons stores or shops, vehicles transporting weapons, places where they are used and all places directly connected with the activities conducted in such places.

The Civil Guard Department, through its Central Weapons and Explosives Office, keeps the Central Register of Handbooks and Licences and may grant access to its information on authorizations and licences and its Police Department handbooks.

Order 631/2002 of the Ministry of the Presidency, of 15 March, regulates the composition and functions of the Standing Interministerial Weapons and Explosives Commission, an advisory body attached to the Ministry of the Interior, with powers to take cognizance of activities relating to the manufacture, circulation, trade, possession and use of all categories of weapons and explosive substances, custody and security of ammunition depots and outlets, transport, weapons safety and, in general, all areas of intervention which are not reserved for the Ministry of Defence.

The Interministerial Commission is made up of representatives of the Ministry of Defence, Economy, Treasury, Science and Technology, Foreign Affairs and Development; they will be joined by a representative of the State Security and of the Police Department and by the Head of the Central Weapons and Explosives Office of the Civil Guard Department.

Spanish legislation does not currently provide for a control system for intermediaries. A draft Royal Decree will update Spanish legislation so as to include such a system. The draft legislation is at an advanced stage, having been studied by all the ministries involved.

23. Do you have any safeguards that the weapons and ammunition produced within your country will not be diverted/used by Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated?

In assessing export licence applications (see above, question 20) the addresses, final destination, final user and final use are evaluated on a case-by-case basis. Ex post facto controls are applied according to the operation.

Controls erga omnes and guarantees for obtaining a certificate of final use are safeguards against diversion to unlawful destinations. In assessing licence applications account is taken of the principles established in the European Union Code of Conduct for Arms Exports, including arms embargoes decided by a common position or joint action adopted by the Council or a decision of the OSCE or an arms embargo imposed by a binding resolution of the Security Council of the United Nations, or the criteria adopted by OSCE in its document on Small Arms and Light Weapons of 24 November 2000.

24. Would your State be willing or able to provide assistance to other States to help them implement the measures contained in the above-mentioned resolutions? If so, please provide additional details or proposals.

Spain conducts numerous counter-terrorism cooperation programmes in numerous areas. Although they have not been specifically designed to deal with the areas covered by resolution 1455, they help to improve its implementation by States receiving assistance, as can be seen from the list of Spain's activities in the area of

international assistance for developing legislative and operative capacities for international action to combat terrorism.* This information has been transmitted to the Counter-Terrorism Committee for inclusion in its assistance matrix.

25. Please identify areas, if any, of any incomplete implementation of the Taliban/Al-Qaida sanctions regime, and where you believe specific assistance or capacity-building would improve your ability to implement the above sanctions regime.

The areas in which the implementation of the Taliban/Al-Qaida sanctions regime encounters the most difficulties in Spain and that are not attributable to the Spanish regulatory and administrative framework are due to insufficient identification of some of the persons connected with the Al-Qaida organization and the Taliban when their accounts and assets are blocked by banking institutions, which was addressed in the reply to question 3.

* On file with the Secretariat.